TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 456

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA, PETITIONER,

vs.

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, AND SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 18, 1927

CERTIORARI GRANTED NOVEMBER 21, 1927

(32,908)

Presumably from the history + context
jurisdiction did not mean more than
But of the function was the same as
in act of 1815 — in respect of Mallards.
They do it in their way —

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TRANSCRIPT OF RECORD

CAPTION

In the District Court of the United States for the Eastern District of South Carolina.
At Law.

At a District Court of the United States for the Eastern District of South Carolina, begun and held at the Court House in the City of Aiken, S. C., on the fourth Monday of September, being the twenty-seventh day of the same month, in the year of our Lord one thousand nine hundred and twenty-six, and adjourned to Charleston on the second day of October, 1926.

Present: The Honorable Ernest F. Cochran, United States District Judge for the Eastern District of South Carolina.

Among other were the following proceedings:

Federal Intermediate Credit Bank,
of Columbia, Plaintiff,

versus

Chas. S. Mitchell, W. E. Richardson,
Truckers Supply Company, and
South Carolina Agricultural Credit
Company, Defendants.

COMPLAINT

(2) Filed August 31, 1926.

United States of America,
Eastern District of South Carolina.

In the District Court
At Law.

Federal Intermediate Credit Bank,
of Columbia, Plaintiff,

vs.

Chas. S. Mitchell, W. E. Richardson,
Truckers Supply Company, and
South Carolina Agricultural Credit
Company, Defendants.

To the Honorable, The District Court of the United States, for the Eastern District of South Carolina:

The complaint of the Federal Intermediate Credit Bank against the above named defendants, respectfully shows as follows:

FOR A FIRST CAUSE OF ACTION:

1. That the plaintiff, the Federal Intermediate Credit Bank, of Columbia, is now and was at the times hereinafter mentioned a corporation duly organized and existing by and under an Act of the Congress of the United States of America, with its principal place of business in the City of Columbia, State of South Carolina.

2. That the defendants, Chas. S. Mitchell and W. E. Richardson, are now and were at the times hereinafter mentioned, citizens and residents of the State of South Carolina, residing in Beaufort County, in said State, and within the jurisdiction of this Honorable Court.

3. That the defendants, Truckers Supply Company and South Carolina Agricultural Credit Company, are now and were at the times hereinafter mentioned, corporations organized and existing by and under the laws of the State of South Carolina, and citizens and residents of the State of South Carolina, with their principal places of business in the County of Beaufort, State of South Carolina, and within the jurisdiction of this Honorable Court.

4. That the cause of action herein set forth is a suit of a civil nature at law between the Federal Intermediate Credit Bank, a corporation incorporated by an Act of

Congress of the United States of America, the entire capital stock of which is owned by the Government of the United States, and citizens and residents of the State of South Carolina, within the jurisdiction of this Honor-
(3) able Court, wherein the matter in dispute, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

5. That heretofore, to-wit, on or about the 11th day of November, 1925, the defendant, Chas. S. Mitchell, for value received, made, executed and delivered unto the defendant South Carolina Agricultural Credit Company, his certain promissory note in writing, of which the following is a copy:

"$6000.00 Beaufort, S. C., November 11, 1925.

Eight months after date I promise to pay to the order of the SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY Six Thousand and no/100 . . . Dollars. For value received, payable at the South Carolina Agricultural Credit Company, Beaufort, S. C., with discount before and interest after maturity at the rate of 6½ per cent per annum until the whole of said debt is paid. And the maker, endorser, surety, or guarantor of this note severally waives demand, presentment, protest and notice of protest.

In case of default each of us, whether maker, endorser, surety, or guarantor of this note hereby agrees to pay ten per cent attorney's fees and all costs and expenses that may be incurred in securing the rights of said South Carolina Agricultural Credit Company and collecting any amount or balance which may remain unpaid under this instrument.

(signed) CHAS. S. MITCHELL."

Endorsed across the back:
"W. E. Richardson
Truckers Supply Co.
By E. B. Mitchell, Pres.
$2.40 revenue stamps affixed.
South Carolina Agricultural Credit Co.
Beulah B. Harvey,
Treasurer."

6. That the defendant, W. E. Richardson, for value, endorsed his name across the back of said note.

7. That upon the making and execution of the said note by the defendant, Chas. S. Mitchell, the same was endorsed by the defendant, Truckers Supply Company; and being so made, executed and endorsed, was thereafter and before maturity delivered to the said South Carolina Agricultural Credit Company.

8. That the said note was duly endorsed by the said South Carolina Agricultural Credit Company and delivered to plaintiff, for value received; and the plaintiff herein, the Federal Intermediate Credit Bank, of Columbia, is now the owner and holder of said note, having acquired same for value before maturity.

9. That no part of the indebtedness evidenced by the said note has been paid, and there is now due and owing thereon by the defendants to the plaintiff, the entire principal sum of Six Thousand Dollars, with interest thereon from the 11th day of July, 1926, at the rate of six and one-half per cent per annum, and the further sum of ten per cent of the amount of principal and interest due as attorney's fees, no part of which has been paid by discount or otherwise although the same is past due and payment thereof has been demanded.

(4) FOR A SECOND CAUSE OF ACTION:

1. That the plaintiff makes the allegations of Paragraphs 1, 2 and 3, of its first cause of action herein, a part of this, its second cause of action, as though the same were here fully repeated and set forth.

2. That the cause of action herein set forth is a suit of a civil nature at law between the Federal Intermediate Credit Bank, a corporation incorporated by an Act of the Congress of the United States of America, the entire capital stock of which is owned by the Government of the United States, and citizens and residents of the State of South Carolina, within the jurisdiction of this Honorable Court, wherein the matter in dispute, as set forth in this cause of action, together with that set forth in

the first cause of action, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

3. That heretofore, to-wit, on or about the 27th day of January, 1926, the defendant, Chas. S. Mitchell, for value received, made, executed and delivered unto the defendant South Carolina Agricultural Credit Company, his certain promissory note in writing, of which the following is a copy:

"$3000.00 Beaufort, S. C., 27th day of January, 1926.

Seven months after date, the undersigned promises to pay to the order of the South Carolina Agricultural Credit Company, Three Thousand and no/100 Dollars for value received, rediscountable by and payable at the Federal Intermediate Credit Bank of Columbia, in Columbia, S. C., with interest from maturity at the rate of eight per centum per annum, with all costs of collection including ten (10%) per centum attorney's fees.

And the undersigned, each for himself, whether maker, or endorser, waives demand and protest, and notice of demand, protest and nonpayment.

Witness my hand and seal the day and year above written.

CHAS. S. MITCHELL."

Endorsed across the back:
W. E. Richardson,
Truckers Supply Co.
By E. B. Mitchell,
Pres.
South Carolina Agricultural Credit Co.
Beulah B. Harvey,
'Treasurer'.

$1.20 revenue stamps affixed.

4. That before maturity of the said note, the defendant, W. E. Richardson, for value, endorsed his name across the back thereof.

5. That upon the making and execution of the said note by the defendant, Chas. S. Mitchell, the same was

endorsed by the defendant, Truckers Supply Company; and being so made, executed and endorsed, was thereafter and before maturity delivered to the said South Carolina Agricultural Credit Company.

6. That the said note was duly endorsed by the said
(5) South Carolina Agricultural Credit Company and delivered to plaintiff, for value received; and the plaintiff herein, Federal Intermediate Credit Bank, of Columbia, is now the owner and holder of said note, having acquired same for value before maturity.

7. That no part of the indebtedness evidenced by the said note has been paid, and there is now due and owing thereon by the defendants to the plaintiff, the entire principal sum of Three Thousand Dollars, with interest thereon from the 27th day of August, 1926, at the rate of eight per cent per annum, and the further sum of ten per cent of the amount of principal and interest due as attorney's fees, no part of which has been paid by discount or otherwise although the same is past due and payment thereof has been demanded.

WHEREFORE, Plaintiff demands judgment against the defendants for the sum of Nine Thousand Dollars, with interest on the sum of Six Thousand Dollars from the 11th day of July, 1926, at the rate of six and one-half per cent per annum, and interest on the sum of Three Thousand Dollars from the 27th day of August, 1926, at the rate of eight per cent per annum, and ten per cent of the total amount of principal and interest due as attorney's fees, and for the costs and disbursements of this action.

RANDOLPH MURDAUGH,
W. BRANTLEY HARVEY,
Plaintiff's Attorneys.

State of South Carolina,
(6) County of Richland.

Personally appeared before me D. T. Gerow, who being duly sworn, says:

That he is the Treasurer of the Federal Intermediate

Credit Bank, of Columbia; that he has read the foregoing complaint and that the same is true of his own knowledge; that the reason this verification is made by deponent is that the plaintiff is a corporation and deponent is an officer thereof, to-wit, its Treasurer.

D. T. GEROW.

Sworn to before me this 28th day of August, 1926.

JOHN T. SOX (L. S.)
Notary Public for South Carolina.

RETURN ON SERVICE OF WRIT

Filed Sep. 3, 1926.

I hereby certify and return that I served the annexed Summons and Complaint, on the therein named W. E. Richardson and So. Ca. Agricultural Credit Company, by handing to and leaving a true and correct copy thereof with W. E. Richardson and H. H. Lake, Pres. of So. Ca. Agricultural Credit Company, personally, at Beaufort in said District on the 1st day of September, 1926; and on the therein named Chas. B. Mitchell by handing to and leaving a true and correct copy thereof with Chas. S. Mitchell, personally, at Dale, in said District on the 2nd day of September, 1926.

SAML. J. LEAPHART,
U. S. Marshal.
By M. P. TOLBERT, Deputy.

ANSWER OF CHAS. S. MITCHELL

(7) Filed Sept. 20, 1926.

To the Honorable the District Court of the United States for the Eastern District of South Carolina:

Chas. S. Mitchell, one of the defendants above named, answering the complaint of the plaintiff, alleges:

AS TO THE FIRST CAUSE OF ACTION:

1. Answering the allegations of Paragraph 1 of the First Cause of Action, he admits the same, and as further identification of the Act of Congress therein mentioned, respectfully refers the Court to the Act of March 4, 1923 entitled: "An act to provide additional credit facilities for the agricultural and livestock industries of the United States; to amend the Federal Farm Loan Act; to amend the Federal Reserve Act; and for other purposes," and commonly known as the Federal Intermediate Credit Bank Amendment to the Federal Farm Loan Act (U. S. Compiled Statutes, 1925, Supplement, Section 9835¼, page 801).

2. Answering the allegations of Paragraphs 2 and 3 of the First Cause of Action, he admits the same.

3. Answering the allegations of Paragraph 4 of the First Cause of Action, he admits the civil nature at law of this action. He admits the identity of the plaintiff, and he admits that the matter in dispute exceeds the sum of Three Thousand ($3 000.00) Dollars, exclusive of interest and costs. He denies all other allegations of the said paragraph, and specifically denies the jurisdiction of this Honorable Court.

4. Answering the allegations of Paragraph 5 of the (8) First Cause of Action, he admits that a note approximately of the tenor set out in the said paragraph was executed by this defendant, but the said note is not now in the possession of this defendant, and he has no means of determining the exact accuracy of the wording used in said note, and therefore makes formal denial of the terms until the said note can be produced. This defendant has no knowledge or information sufficient to form a belief as to the endorsements on the back of said note and therefore denies the same. All other allegations of the said paragraph not specifically admitted are denied.

5. Answering the allegations of Paragraphs 6, 7 and 8 of the First Cause of Action, this defendant has no knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

6. This defendant denies the allegations of Paragraph 9 of the First Cause of Action.

AS TO THE SECOND CAUSE OF ACTION:

7. Answering the allegations of Paragraph 1 of the Second Cause of Action, this defendant makes the same answers thereto as are made to Paragraphs 1, 2 and 3 of the First Cause of Action.

8. Answering the allegations of Paragraph 2 of the Second Cause of Action, he admits the civil nature at law of this action. He admits the identity of the plaintiff, and he admits that the matter in dispute exceeds the sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs. He denies all other allegations of the said paragraph, and specifically denies the jurisdiction of this Honorable Court.

9. Answering the allegations of Paragraph 3 of the Second Cause of Action, he admits that a note approximately of the tenor set out in the said paragraph was executed by this defendant, but the said note is not now in the possession of this defendant, and he has no means of determining the exact accuracy of the wording used in said note, and therefore makes formal denial of the terms until the said note can be produced. This defendant has no knowledge or information sufficient to form a belief as to the endorsements on the back of said note and therefore denies the same. All other allegations of the said paragraph not specifically admitted are denied.

10. Answering the allegations of Paragraphs 4, 5 and (9) 6 of the Second Cause of Action, this defendant has no knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

11. Answering the allegations of Paragraph 7 of the Second Cause of Action, this defendant denies the same.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A SECOND SEPARATE AND COMPLETE DEFENSE, THIS DEFENDANT ALLEGES:

12. That this Honorable Court is without jurisdiction of the matters and things set forth in the complaint of the plaintiff in that there are no allegations in the said complaint, and there are no facts extent, bringing this proceeding within the grant of the jurisdiction of this Court, or sufficient to overcome the presumption against the jurisdiction of his Court.

FURTHER ANSWERING THE SAID COMPLAINT AND AS A THIRD SEPARATE AND COMPLETE DEFENSE, THIS DEFENDANT ALLEGES:

13. That this defendant is now and was at all times hereinafter mentioned engaged in business as a farmer in the County of Beaufort, State of South Carolina, and as such engaged in extensive operations as a truck grower.

14. That the plaintiff herein during the year 1925 and prior thereto engaged inter alia in the business of lending money for interest to farmers in the County of Beaufort, S. C.

15. That in its operations of lending money as aforesaid, the plaintiff acted entirely through the medium of an organization known as the South Carolina Agricultural Credit Company, the affairs of which were actually and actively managed by W. E. Richardson, and the said Richardson actively solicited the farmers of Beaufort County to borrow money from the plaintiff, representing to this defendant and other persons that money could be borrowed from the plaintiff at advantageous rates of interest, and by argument and persuasion inducing this defendant and other persons to borrow money as aforesaid.

16. That the said Richardson, acting for and in behalf of the plaintiff, represented to this defendant that for the purpose of obtaining loans from the plaintiff at low rates of interest, it was required by the plaintiff that the loans from the plaintiff to farmers be handled through (10) the South Carolina Agricultural Company, and that all produce of the borrower should be sold through the Beaufort Truck Growers Co-operative Association,

with such control of the proceeds as would secure the plaintiff.

17. That on or about the 11th day of November, 1925, this defendant applied to the said W. E. Richardson for a loan from the Federal Intermediate Credit Bank, the plaintiff herein, through the South Carolina Agricultural Credit Company, and said W. E. Richardson had this defendant to sign the note for Six Thousand ($6,000.00) Dollars, dated November 11th, 1925, set out in the Fifth Paragraph of the first cause of action in the complaint herein, and also at the same time had this defendant to sign an agricultural crop mortgage to secure said note, copy of which crop mortgage is hereto attached, marked "Exhibit A", and made a part of this answer, and to which the attention of this Honorable Court is craved, said note and mortgage constituting one contract and agreement, and designated by the said W. E. Richardson as an application for a loan from the plaintiff in this action, and this defendant was later informed that his loan had gone through.

18. That on or about the 27th day of January, 1926, this defendant applied to the said W. E. Richardson for a second loan from the said Federal Intermediate Credit Bank of Columbia, through the said South Carolina Agricultural Credit Company, for Three Thousand ($3,000.00) Dollars and signed the note and crop mortgage dated January 27th, 1926, copy of which is hereto attached and marked "Exhibit B", and made a part of this answer, and to which the attention of this Honorable Court is craved, a portion of said note being set out in Paragraph 3 of the second cause of action in said complaint.

19. That at the time of signing each of the above mentioned notes and mortgages this defendant was required by the said Richardson also to sign a written agreement with said South Carolina Agricultural Credit Company, whereby this defendant was bound to have all returns from sales of vegetables made on the lands covered by said mortgages turned over to the said South Carolina Agricultural Credit Company or the Federal Intermediate Credit Bank of Columbia or to the holder of the

notes, to be applied to the satisfaction of said notes, and the proceeds of the said crops were assigned to the said South Carolina Agricultural Credit Company.

20. That in these transactions the said Richardson (11) managed, controlled, or dominated the South Carolina Agricultural Credit Company, and in all of these transactions the said W. E. Richardson and the South Carolina Agricultural Credit Company individually and collectively were acting as agents for the plaintiff corporation.

21. That the money evidenced by the said notes set out in the complaint was not paid over to this defendant at the time of the negotiation of said notes, but was retained either by the plaintiff or by one of its agents and was advanced to this defendant from time to time upon application to the said Richardson or to persons in his office in the Beaufort Bank, and acting under his directions, and this defendant has never received the full amount evidenced by the notes.

22. That the effect of the requirements placed upon this defendant by the plaintiff and by its agents acting in its behalf as aforesaid, was to secure from the defendant his personal obligation for Nine Thousand ($9,000.00) Dollars with interest, no such sum of money having been advanced to this defendant, and to require this defendant to mortgage all crops grown by him and also to require this defendant to assign the proceeds of said crops for the benefit of the plaintiff, and also to require this defendant to place the marketing of said crops under an agency designated by the plaintiff, so that the plaintiff by this arrangement maintained a firm grip and absolute control upon the operations of this defendant in financing the growing of his crops, in marketing his crops, and in disposing of the proceeds.

23. That as a result of his farming operations this defendant during the season of 1925-1926 raised crops on lands described in the said mortgages, which crops were marketed through the Beaufort Truck Growers Co-operative Association as required by the plaintiff, and the returns from the sale of said crops amounted to more than Eighteen Thousand ($18,000.00) Dollars, but, by reason

of the drastic and stringent requirements placed upon this defendant by the plaintiff, this defendant was unable to obtain any of the said proceeds from the Beaufort Truck Growers Co-operative Association, and this defendant is informed and believes that the said proceeds were paid over by the Beaufort. Truck Growers Co-operative Association to the plaintiff or to its agent, South Carolina Agricultural Credit Company, or to its (12) agent, W. E. Richardson, or were otherwise disposed of as directed by the plaintiff or its agent.

24. That the said proceeds of the sale of defendant's crops, amounting to more than Eighteen Thousand Dollars, have been paid to or for the benefit of the plaintiff herein, and the said sum more than paid such advances as were made by or in behalf of the plaintiff to this defendant from time to time, either evidenced by the said notes or otherwise.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A FOURTH SEPARATE AND COMPLETE DEFENSE THERETO, THIS DEFENDANT ALLEGES:

25. That the notes set out in the complaint of the plaintiff were given in accord with a well established system under which the plaintiff was engaged in advancing money for interest to the farmers of Beaufort County, and under the said system as was well known to the plaintiff at the time of the taking of the said notes, the said notes were secured by crop mortgages and also by a collateral agreement under which the maker of said notes was required to market the produce of his farm through a certain agency and authorized the said agency to pay over the proceeds of the said crops to the holder of the notes. That the plaintiff in taking the said notes was fully aware of the collateral undertakings of this defendant as absolutely and completely as if the said collateral undertakings had been embodied in the said notes as a part thereof.

26. That the collateral undertakings hereinabove referred to were required by the plaintiff as security for the notes and as a condition of its acceptance of the said

notes and prescribed a method of crop finance and crop marketing that placed this defendant and other persons borrowing from the plaintiff under the said system at the mercy of the agencies designated by the plaintiff and that designated a fund out of which the notes were to be paid and that imposed upon the holder of the notes certain reciprocal obligations to the note maker to see that the fund was properly applied.

27. That because of the form of the said notes and the terms of the collateral undertakings required by the plaintiff as aforesaid, and known by the plaintiff to exist at the time of the taking of said notes, the said notes were non-negotiable and the plaintiff took the same fully (13) charged with defenses existing thereon between the original nominal parties thereto.

28. That at the time the said notes were received by the plaintiff this defendant had failed to receive the full consideration for the said notes, and there was a failure of consideration, total or partial, between the parties thereto at that time.

29. That subsequently this defendant drew drafts against the South Carolina Agricultural Credit Company and delivered farm produce to the Beaufort Truck Growers Co-operative Association that sold the same, and, as this defendant is informed and believes, paid the proceeds thereof to the said South Carolina Agricultural Credit Company or at its behest to the plaintiff herein, and the total amount so paid was in excess of all sums advanced to the plaintiff by the said South Carolina Agricultural Credit Company on the notes or otherwise, and as a result of the said transactions the said notes have been fully paid and discharged.

WHEREFORE, This defendant prays that he may be dismissed hence with his costs in this case.

W. J. THOMAS,
BUIST & BUIST,
Attorneys for Defendant,
Chas. S. Mitchell.

State of South Carolina,
County of Beaufort.

Personally appeared before me Chas. S. Mitchell, who, being duly sworn, deposes and says that he is one of the defendants in the above case, that he has read the foregoing Answer and that the same is true of his own knowledge, except as to those matters therein alleged on information and belief, and as to those he believes it to be true.

CHAS. S. MITCHELL (L. S.)

Sworn to before me this 16th day of September, 1926.

LeROY BANKS ATTAWAY.
(14) Notary Public for S. C.

EXHIBIT "A"—CROP MORTGAGE

State of South Carolina,
County of Beaufort.

TO ALL WHOM THESE PRESENTS MAY CONCERN: I, C. S. Mitchell, of said County and State, send greeting:

Whereas, I, the said C. S. Mitchell, in order to plant and harvest the crops hereinafter described and mortgaged, have applied to the South Carolina Agricultural Credit Company, a corporation duly created and existing under and by virtue of the laws of the State of South Carolina, to assist me by advancing money and supplies to carry on my planting and harvesting operations for the year 1925-1926 in an amount not to exceed Six Thousand and No/100 Dollars; and,

Whereas, the South Carolina Agricultural Credit Company has agreed so to do in consideration of the execution by me of this mortgage and the carrying out of all of its items, provisions and conditions as contained herein; and,

Whereas, I, the said C. S. Mitchell, am indebted to the said South Carolina Agricultural Credit Company in the sum of Six Thousand and no/100 Dollars, and have given my note therefor as follows, to-wit:

One note dated the 11th day of November, 1925, for Six Thousand ($6000.00) Dollars, payable *of* the 11th day of July, 1926, with interest thereon after maturity at the rate of 6½ per cent. per annum.

NOW, THEREFORE, KNOW ALL MEN: That I, the said C. S. Mitchell, in consideration of the premises and also in consideration of the sum of $5.00 to me in hand paid at and before the execution of these presents (receipt whereof is hereby acknowledged), in order to secure the payment of the said note and to secure the payment of all such further sums of money as the mortgagor may owe unto the mortgagee, its successors and assigns, for any and all advances in cash and supplies made to the mortgagor from time to time to enable me to make and harvest crops during the year 1925-1926; and in order (15) to secure any and all indebtedness now due or which may hereafter become due to the mortgagee, its successors and assigns by the said mortgagor, the said mortgagor *have* granted, bargained and sold and by these presents do grant, bargain and sell and in plain and open market deliver unto the mortgagee, its successors and assigns, the following goods and chattels, to-wit:

All the crops of every kind and description now planted or to be planted during the year 1925-1926 on all that tract of land in the County and State aforesaid, known as C. S. Mitchell, containing 82 acres, more or less, and bounded:

North by lands of Lucy Blake and others,
East by the estate of Frazier,
South by land of R. Carr and waters of Adams Creek,
and West by land of Dan Simmons and estate of Tom Reed.

The crops planted or to be planted on the above described tract of land being 5 acres English peas, 60 acres potatoes, 50 acres of corn, 50 acres of Velvet Beans, Soy Beans and Cow Peas.

And I hereby represent, warrant and guarantee that there are not now any liens of any nature whatsoever against any of the said crops or other property mentioned above and herein mortgaged.

Together with all and singular the rights, members, hereditaments and appurtenances incident to the said property.

To have and to hold all and singular the said crop or crops and goods and chattels unto the said South Carolina Agricultural Credit Company, its successors and assigns, forever. The mortgagor hereby expressly declare that it is ..... intention and purpose that the crop or crops planted and growing and to be planted, grown, raised, made or harvested upon the above described land or lands is and shall become and remain subject to the lien of this mortgage until the same shall have been harvested and applied to the payment of the amount due and owing unto and upon this mortgage.

Provided, nevertheless, that if the said mortgagor shall pay to the mortgagee, its successors or assigns, the said (16) sum of money and indebtedness hereinbefore mentioned, with interest thereon, according to the true intent and meaning of these presents, then this mortgage shall be void; otherwise to remain in full force and virtue. But should any proceeding be necessary to collect the said indebtedness, or any part thereof, or should this mortgage be put into the hands of an attorney for collection, a conclusion of 10% upon the amount due shall be added to cover attorney's fees for collecting the same, and in the event of the non-payment of any part of the said indebtedness when due, then the whole amount shall become immediately due and payable.

AND PROVIDED FURTHER: That said mortgagor shall retain possession of said crop or crops, goods and chattels until default be made in the payment of said note or notes; but if the same be not paid when due, or if before said note become due the said mortgagor shall attempt to make way with or remove the said crop or crops, goods or chattels, or any part or parcel thereof, from the place where they now are, or from the premises above described, or should the mortgagee at any time deem its security unsafe or in danger, then and in either

event the said mortgagee or its agents, successors or assigns, shall have the right, without suit or process of law, to enter such place or places where the said crop is or shall be then located, and to take possession of the said crop or crops (whether growing or harvested), goods and chattels, wherever they may be found, and may sell the same, or so much thereof as may be necessary, at public auction to the highest bidder for cash, after three days' advertisement at such place in the aforesaid County as may be most convenient for the mortgagee, with the right at such sale to purchase the same or any part thereof, and shall apply the proceeds of said sale to the discharge of said debt, costs and expenses, including 10% attorney's fees for collection and a reasonable attorney's fee if any litigation be had concerning said debt or the property hereby mortgages, returning the overplus, if any to the said mortgagor.

Witness my Hand and Seal this the 11th day of No-
(17) vember, One thousand, nine hundred and twenty-five.

CHAS. S. MITCHELL, (L. S.)

Signed, sealed and delivered in the presence of

O. H. DAVIS
W. P. JAY.

State of South Carolina,
County of Beaufort.

Personally appeared before me O. H. Davis and made oath that he was present and saw the above named C. S. Mitchell sign, seal, and, as his act and deed, deliver the above written instrument; and that he with W. P. Jay witnessed the execution thereof.

O. H. DAVIS.

Sworn to before me this 11th day of November, 1925.

W. P. JAY (L. S.)
Notary Public for South Carolina.

(Seal)

EXHIBIT "B"—CROP NOTE

FEDERAL INTERMEDIATE CREDIT BANK OF
(18) COLUMBIA

CROP PRODUCTION NOTE

$3,000.00 Beaufort, S. C., 27th day of January, 1926.

Seven months after date the undersigned promises to pay to the order of the South Carolina Agricultural Credit Company Three Thousand and No/100 Dollars, for value received, rediscountable by and payable at the Federal Intermediate Credit Bank of Columbia, S. C., with interest from maturity at the rate of eight (8%) per centum per annum, with all costs of collection, including ten (10%) per centum attorney's fees, and the undersigned each for himself, whether maker or endorser, waives demand and protest and notice of demand, protest and non-payment.

Witness my hand and seal the day and year above written.

CHAS. H. MITCHELL (L. S.)

Address:

.....

MORTGAGE OF CROPS AND OTHER PERSONAL PROPERTY

State of South Carolina,
County of Beaufort.

Whereas, I, C. S. Mitchell, of said County and State, hereinafter called the Mortgagor, whether one or more, am indebted to South Carolina Agricultural Credit Company, hereinafter called the Mortgagee, in the sum of Three Thousand ($3,000.00) Dollars, for which the Mortgagor has executed and delivered to the Mortgagee the above promissory note.

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) in hand paid by the mortgagee to the Mortgagor, as well as for the purpose of securing the payment of the said note and the advances made by the Mortgagee to the Mortgagor, together with any renewal or extension thereof, in whatever form the same may be, and any other indebtedness now due or to become due, or hereafter to be contracted, the Mortgagor hereby grants, bargains and sells unto the Mortgagee, its successors and assigns, all of the crops planted by the Mortgagor during the year of the date hereof, grown on the following (19) described lands:

Lying and being in Beaufort County South Carolina, to-wit:

(Description must definitely identify land)

known as C. S. Mitchell's place, containing eighty-two acres, more or less, and bounded as follows: North by lands of Lucy Blake and others; East by Estate of Frazier; South by lands of R. Carr and waters of Adams Creek, and West by lands of Dan Simmons and Estate of Tom Reed.

Also 15 acres of land bounded as follows: North by lands of Doctor and others; East by Estate of Esau Barnes; South by lands of E. B. Mitchell, and west by lands of John Austin.

All the crops of Peas, Potatoes, Tomatoes, Corn and Soy Beans planted or to be planted on the above described lands as hereinafter specified.

Said crops consisting of approximately .... acres in Cotton, 50 acres in Corn, 5 acres in Peas, ... acres in Peanuts, ... acres in Sugar Cane, ... acres in Beans, 50 acres in Hay, ... acres in Melons, ... acres in Tobacco, 65 acres in Irish Potatoes, ... acres in Sweet Potatoes, ... acres in Cabbage, ... acres in Lettuce, 20 acres in Tomatoes, ... acres in Peaches, ... acres in Cucumbers, ... acres in Peppers .....

In order to further secure the payment of the said note of and advances to the Mortgagor by the Mortgagee and/or any renewal or extension thereof in whatever form the same may be, as well as all other indebtedness now due or to become due, or hereafter to be contracted,

the Mortgagor grants, bargains and sells to the Mortgagor, its successors and assigns, the following property located and being on the farm owned and/or occupied by the Mortgagor hereinbefore described, to-wit:

(Note: Description must be definite.)

Mules of the following description: .....
Horses of the following description: .....
Cows of the following description: .....
Other personal property: .....

TO HAVE AND TO HOLD all and singular the said crops, goods and chattels unto the Mortgagee, its suc-
(2.) cessors and assigns forever.

The Mortgagor agrees to plant during the year named and to *cultivate* and harvest said crops with ordinary care and diligence, and in the event of failure to do so, the Mortgagee and/or its assignee is hereby authorized and empowered to enter in and upon said lands for the purpose of cultivating, gathering and harvesting any or all of the said crops whenever in its discretion its interest may so require, and any expense incurred in so cultivating, gathering and harvesting said crops shall be charged to the Mortgagor and become secured hereby, and such failure to plant, cultivate and/or harvest said crops as aforesaid shall at the option of the Mortgagee render the whole amount of the indebtedness secured hereby immediately due and payable, and the Mortgagee may proceed at once to take possession of said property and to sell the same as hereinafter provided.

The Mortgagor further agrees in case of serious injury to or loss by death or otherwise of any of said property to report the same immediately to the Mortgagee, and in the event of failure to do so, the Mortgagee shall have the right at its option to declare the entire indebtedness secure hereby due and payable at once, immediately to take possession of said property and to sell the same as hereinafter provided.

PROVIDED, NEVERTHELESS, That if the Mortgagor shall pay to the Mortgagee the indebtedness hereinbefore mentioned and secured hereby when due, then this mortgage will be void; otherwise it shall remain in full force and effect.

AND PROVIDED FURTHER: That the Mortgagor may retain possession of said crops, goods and chattels until default be made in the payment of said note or in the performance of any of the terms, conditions and agreements hereof; but if the same is not paid when due, or if before said note is due the mortgagor shall attempt to make way with or remove any or all of the said crops, goods and chattels from the place where they now are, or from the premises above described, or shall neglect to take care of and maintain the same in good condition, or should the Mortgagee at any time deem its security unsafe or in danger or in case of the violation or breach of any of the terms, conditions and agreements of this mort-
(21) gage, then and in such event the Mortgagee and/or its agents shall have the right without suit or process to take possession of any or all of said crops, goods and chattels, wherever they may be found, to sell the same, or so much as may be necessary, at public auction for cash, after giving notice thereof by advertisement for three days at such places in the said County as may be most convenient to the Mortgagee, to apply the proceeds of such sale to the discharge of said indebtedness and accrued interest, together with any expenses and attorney's fees incurred by the Mortgagee as provided for herein, and to pay to the Mortgagor any surplus that may remain.

The Mortgagor hereby warrants the title to the crops and other personal property described herein against the lawful claim of all persons whomsoever, and covenants that the same is free and clear of all rights and encumbrances of every nature and kind whatsoever.

IN WITNESS WHEREOF, I do hereunto set my hand and seal this the 27th day of January, A. D. 1926.

CHAS. S. MITCHELL (L. S.)

Signed, sealed and delivered
in the presence of:

E. J. RAWL
W. P. JAY

WAIVER OF LANDLORD'S LIENS

The State of South Carolina,
County of .....

In consideration of the advances of money represented by the Note on the reverse side hereof and secured by above mortgage as and for the purposes therein set forth, the undersigned owner of the premises therein described does hereby waive the liens of the landlord for rent and supplies under the laws of South Carolina in favor of said note and mortgage and the indebtedness secured thereby, to the end that the said note and mortgage shall have priority over the landlord's said liens for rent and for supplies until the indebtedness secured thereby has been paid in full, including accrued interest, attorney's
(22) fees and costs of collection.

WITNESS ..... hand and seal this ..... day of ....., 192...

.....(L. S.)

State of South Carolina,
County of Beaufort.

Personally appeared before me E. J. Rawl, and made oath that ..... saw the within named Chas. S. Mitchell sign, seal, and as his act and deed, deliver the within written instrument; and that he subscribed his name as a witness thereto.

W. J. RAWL.

Sworn to before me this 27th day of January A. D. 1926.

W. P. JAY (L. S.)
(Seal) Notary Public S. C.

NOTICE OF MOTION TO DISMISS FOR WANT OF JURISDICTION

(23) Filed Sept. 20, 1926.

To Messrs. Randolph Murdaugh and W. Brantley Harvey, Plaintiff's Attorneys:

Please take notice that four (4) days after the service hereof, or as soon thereafter as counsel can be heard, we shall move before his Honor, the District Judge, at his Chambers at Charleston, S. C., upon the pleadings herein to dismiss the Complaint for want of jurisdiction.

W. J. THOMAS,
BUIST & BUIST,
Attorneys for Defendant,
Chas. S. Mitchell.

Dated Sept. 16, 1926.

ACCEPTANCE OF SERVICE

Due and legal service of a copy of the within Answer and Notice of Chas. S. Mitchell, is admitted this 17th day of Sept., 1926.

W. BRANTLEY HARVEY,
RANDOLPH MURDAUGH,
Plaintiff's Attorneys.

OPINION

(24) Filed October 9, 1926.

The plaintiff, a Federal Intermediate Credit Bank, is a corporation organized under an Act of Congress, with its principal place of business in the City of Columbia, S. C. The defendants are all citizens of South Carolina. The action is to recover upon certain notes and the matter in dispute, exclusive of interest and costs, exceeds the sum of $3000.00. The defendant, Chas. S. Mitchell, has moved to dismiss the action on the ground that this Court has no jurisdiction.

The plaintiff was organized under an Act of Congress of March 4, 1923, Ch. 252, 42 Stats. L., 1454. By Sec. 205 of that Act, it is provided that all of the Stock of Federal Intermediate Credit Banks shall be subscribed, held and paid by the Government of the United States, and it is alleged in the complaint that the entire capital stock of the plaintiff is owned by the Government.

Sec. 24 of the Judicial Code provides that the District Court shall have original jurisdiction of all suits of a civil nature where the matter in controversy exceeds $3000.00, and arises under the Constitution and laws of the United States.

It is well settled and is conceded by the defendant that an action by a corporation created by an Act of Congress is one arising under the laws of the United States.

American Banking & Trust Co. v. Federal Bank, 256 U. S. 356.
Matter of Dunn, 212 U. S. 374.
Pacific R. R. Removal Case, 115 U. S. 1.
Osborn v. Bank of U. S., 9 Wheat. 738.

It is clear therefore that unless there is an Act of Congress which excludes jurisdiction, the Court would have (25) Jurisdiction of this cause. The defendant contends that jurisdiction is excluded by Sec. 201, Subd. (c), of the Act of Congress authorizing the organization of Federal Intermediate Banks, which is as follows:

"(c) Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, *and for purposes of jurisdiction shall be deemed a citizen of the State where it is located.*" (Italics mine).

Act of Congress of March 4, 1923, Ch. 252, 42 Stats. L. 1454.

The plaintiff claims that inasmuch as more than one-half of its capital stock is owned by the Government, the section referred to is superceded or impliedly repealed by Sec. 12 of the Act of Congress of February 13, 1925, Ch. 229, 43 Stats. L. 941, and contends that the jurisdiction can be sustained under the last mentioned Act. This section reads as follows:

"Sec. 12. That no district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: *Provided,* That this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock."

The first question is whether Subd. (c) of Sec. 201 of the Act of Congress of March 4, 1923, which provides that for purposes of jurisdiction a Federal Intermediate Credit Bank shall be deemed a citizen of the State where it is located excludes the jurisdiction of this Court when invoked on the sole ground that the case is one arising under the laws of the United States, by reason of Federal incorporation.

In Herman v. Edwards, 238 U. S. 107, the Supreme Court had under consideration a similar clause in reference to National Banks. Sec. 24 of the Judicial Code gives the District Court jurisdiction in certain cases and the clause under consideration by the Supreme Court is contained in paragraph 16 which is as follows:

"Sixteenth. Of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title 'National Banks', Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. *And all National* (26) *banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real personal or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located.*" (Italics mine).

The previous Acts of Congress (Act of Congress of August 13, 1888, of March 3, 1888, and of July 12, 1882) while providing that all national banking associations established under the laws of the United States should for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed

citizens of the States in which they respectively are located, contained a further express provision that the Circuit Court and District Court should not have jurisdiction other than such as they would have in cases between individual citizens of the same State. When the Act of 1888 was superseded by the Judicial Code, the words "And in such cases the Circuit and District Courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State" were omitted. The Supreme Court held that even though those express words had been omitted, nevertheless the Federal Courts would not have jurisdiction of a case brought by a National Banking Association on the sole ground that because of its Federal incorporation it is a case arising under the laws of the United States.

Herman v. Edwards was decided in 1915, and must be taken as settling the law that when Congress declares that a corporation organized under the laws of the United States shall for the purposes of jurisdiction be deemed a citizen of the State wherein it is located, such declaration has the effect of excluding the jurisdiction of United States Courts on the sole ground of the case being one arising under the laws of the United States, because of the Federal character of the corporation. When therefore Congress in providing by the Act of March 4, 1923, that each Federal Intermediate Bank should for the purposes of jurisdiction be deemed a citizen of the State where it is located, it must be assumed that it was in the light of the decision in Herman v. Edwards *supra*, and that the intention was to exclude jurisdiction of the Federal Courts when invoked on the sole ground that the case of such Federal Intermediate Credit Bank would be one arising under the laws of the United States. The plaintiff contends, however, that the restrictive clause in question declaring that for purposes of jurisdiction the Federal Intermediate Credit Banks shall be deemed citizens of the State where they are located, refers only to jurisdiction of the person and was intended only to fix the residence of such banks. But the difficulty with that contention is that Congress has used the word "jurisdiction" alone, and has not limited or restricted it to jurisdiction of the person, and moreover, such construction is inconsistent with the decision of the Supreme Court in
(27) Herman v. Edwards, *supra*.

It seems clear therefore that under the Act of Congress under which Federal Intermediate Credit Banks are organized, Federal Courts would not have jurisdiction of cases brought by or against them on the sole ground that such cases arise under the laws of the United States.

The next question is whether Subd. (c) of Sec. 201 of the Act of Congress of March 4, 1923, has been superseded or impliedly repealed by Sec. 12 of the Act of Congress of February 13, 1925.

In considering Sec. 12, it will be observed that it does not purport to be a grant of jurisdiction. The main object of the section is to exclude jurisdiction, and the proviso is peculiarly worded so as to exclude the idea that there was intended by that section any grant of jurisdiction. After first providing that no District Court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, the proviso states that this section "*shall not apply*" to any suit, action, or proceeding brought by or against a corporation incorporated by Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock. By the express terms of the proviso, the section does not apply to an action brought by the plaintiff. It follows therefore that the previous provision that no District Court shall have jurisdiction of any action, etc., can have no application to the case of this plaintiff. If the plaintiff claims that the Federal Courts have jurisdiction, it must seek its grounds in some other Act of Congress and cannot base its claim of jurisdiction upon Sec. 12, and on the other hand, if the defendant seeks to defeat the jurisdiction of the Federal Courts he cannot base his claim upon this section, because this corporation is expressly excluded from its effect. Sec. 12 neither confers nor excludes jurisdiction in the case of a corporation where the United States owns more than one-half of the stock. In other words, the jurisdiction must depend upon other Acts of Congress and not upon Sec. 12 in such cases, and when we refer to the other Acts of Congress, we find that jurisdiction is excluded. While it is a case arising under the laws of the United States, jurisdiction is excluded by Subd. (c) of Sec. 201 of the Act of Congress under which Federal Intermediate Credit Banks are organized. Nor is there any inconsist-

ency between that Act and Sec. 12 of the Act of February 13, 1925. It is hardly conceivable that Congress after creating Federal Intermediate Credit Banks and providing expressly that all the stock should be held by the Government and also providing that they should be deemed citizens of the State wherein they were located, and thereby excluding jurisdiction, could have intended to supersede or repeal that provision of such Act by the (28) language employed in the proviso to Sec. 12. If Congress had intended to confer jurisdiction or to repeal or supersede Subd. (c) of Section 201 of the Act of March 4, 1923, they could have used appropriate words to that effect, but instead of doing so, they in express terms excluded all such corporations from the operation of Sec. 12.

This view strengthened by a consideration of the history of Sec. 12, and the report of the Senate Committee in charge of the bill. While such reports cannot override the clear and certain provisions of a statute as finally enacted, yet they may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of a statute is obscure.

Duplex v Deering, 254 U. S. 443, 474.

Section 12 was originally enacted in 1915 and applied only to railroad corporations and contained no exception in favor of the Government. It was originally Section 5 of the Act of Congress of January 28, 1915, 38 Stats. L. 804, which reads as follows:

"Sec. 5. No court of the United States shall have jurisdiction of any action or suit by or against any railroad company upon the ground that said railroad company was incorporated under an Act of Congress."

The original bill which was finally enacted as the Act of February 13, 1925, was Senate Bill 2060. The report of the Judiciary Committee of the Senate of April 7, 1924, shows that the original bill contained a re-enactment of Sec. 5 of the Act of January 28, 1915, but enlarging the same so as to apply to all corporations, but contained no proviso in favor of the Government, the proviso being added upon the recommendation of the Committee. The pertinent portion of the report of the Committee is as follows:

"Section 12 of the bill presents a distinct subject relating to the jurisdiction of the district courts of the United States. It is an enlargement of that provision of the existing law which declares that no district court shall have jurisdiction over suits brought by or against a railway corporation solely because it was incorporated by or under an Act of Congress. It is believed that this section should be somewhat restricted, and your subcommittee proposes the following amendment:

"Add to the section—

"*Provided,* That this section shall not apply to any suit, action or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half its capital stock."

It is clear from this report that it was the intention to (29) enlarge the existing law in reference to railway corporations but to restrict such enlarged provision by excluding corporations where the Government owned more than one-half of the stock. There is no suggestion anywhere in the report that there was any intention to confer jurisdiction in such cases or that there was any intention to supersede or repeal any of the provisions of law relating to Federal Intermediate Credit Banks.

It is to be observed that Sec. 5 of the Act of January 28, 1915, was not only superseded by Sec. 12 of the Act of February 13, 1925, but by Sec. 13 of the later Act, Sec. 5 of the Act of January 28, 1915, was *expressly repealed,* but the Act of February, 13, 1925, makes no mention whatever of any Acts in relation to the organization of Federal Intermediate Credit Banks, and contains nothing which would show any intention to repeal or supersede them.

The plaintiff relies upon American Bank & Trust Co. v. Federal Reserve Bank, 256 U. S. 350, and Sowell v. Federal Reserve Bank, 268 U. S. 449. But these cases are not in point. In American Bank & Trust Co. v. Federal Reserve Bank, the Court held that the Federal Reserve Banks created after the Judicial Code was enacted were not included in the phrase "National Banking Associations" and therefore were not prevented from

resorting to the Federal Courts in cases brought by them on the ground of their being Federal corporations. In Sowell v. Federal Reserve Bank, the Court held that the so-called "assignee clause" of Sec. 24 of the Judicial Code did not exclude suits where the sole ground of jurisdiction is that the suit arises under the laws of the United States, but applied merely to cases where the ground of jurisdiction is diversity of citizenship.

While a cursory reading of Sec. 12 might leave the impression that Congress intended that the Court should have jurisdiction in this case, nevertheless a careful study of it leads inevitably to the conclusion that such was not the intention. Stated in a nutshell, the difficulty is that the plaintiff is compelled to ask the Court to infer that it has jurisdiction from a section of an Act of Congress which expressly declares that that section shall have no application whatever to its case. The objection therefore to the jurisdiction is well taken and the motion to dismiss must prevail, and an appropriate order will be entered accordingly.

ERNEST F. COCHRAN,
U. S. District Judge.

Charleston, S. C.,
October 9, 1926.

ORDER OF DISMISSAL

(30) Filed October 9, 1926.

In the District Court of the United States for the Eastern District of South Carolina.

Federal Intermediate Credit Bank of Columbia, Plaintiff,

vs.

Chas. S. Mitchell, W. E. Richardson, Truckers Supply Company, and South Carolina Agricultural Credit Company, Defendants.

In an opinion filed this day, the Court has sustained

the objection to the jurisdiction of the Court. It does not appear that the objection can be cured by an amendment. However, the Plaintiff will be given an opportunity to amend so as to allege jurisdictional grounds if it be so advised. For these reasons and for the reasons set forth in the opinion,

It is

ORDERED, ADJUDGED, AND DECREED, That the objection of the defendant, Chas. S. Mitchell, to the jurisdiction of the Court be and the same is hereby sustained, and the plaintiff is given leave within twenty (20) days from the date of this order to serve upon the defendants' attorneys and file with the Clerk of this Court, an amended complaint, if it be so advised; but if the plaintiff shall fail so to serve and file such amended complaint within the time stated, then upon the expiration of twenty (20) days from the date of this order, the complaint herein shall be and is hereby dismissed for want of jurisdiction, without any further order of this Court.

ERNEST F. COCHRAN,
U. S. District Judge.

Charleston, S. C.
October 9, 1926.

ASSIGNMENT OF ERRORS

(31) Filed Oct. 29, 1926.

Now comes Federal Intermediate Credit Bank, of Columbia, plaintiff in error in the above numbered and entitled cause, and in connection with its petition for a Writ of Error in this cause assigns the following errors which plaintiff in error avers occurred on the trial thereof, and upon which it relies to reverse the judgment entered herein as appears of record:

1. That the Court erred in ruling and holding that the objection to the jurisdiction was well taken and the motion to dismiss must prevail, because the Federal Government owns all of the capital stock of the plaintiff,

Federal Intermediate Credit Bank, and it was chartered and organized under an act of the United States Congress, and this was an action arising under the laws of the United States and the District Court of the United States for the Eastern District of South Carolina had jurisdiction and the Court should have so held.

2. That the Court erred in rendering its Order of (32) Dismissal of this case upon the ground that the said Court had no jurisdiction of said cause, because in fact and in reality the said Court had jurisdiction under the constitution and the laws of the United States, and the Judge should have so held.

WHEREFORE plaintiff in error prays that the judgment of said Court be reversed.

RANDOLPH MURDAUGH,
D. W. ROBINSON,
Attorneys for Plaintiff in Error.

October 27, 1926.

Due and legal service of the foregoing Assignment of Errors acknowledged and a copy of the same retained at Beaufort, S. C., October 27, 1926.

.....

W. J. THOMAS,
Attorneys for Defendants, Chas. S. Mitchell.

CERTIFICATE OF JURISDICTION ONLY ISSUE

(33) Filed October 29, 1926.

This cause came on to be heard upon the Complaint and Answer of defendant Chas. S. Mitchell, other defendants did not appear or answer, and the plea to the jurisdiction of the Court, by said defendant.

The Complaint set forth two causes of action on two separate notes and asked judgment against the defendant for the amount represented by said respective notes. The complaint also set forth that it was a corporation

Due and legal service of the foregoing Notice, Petition (37) for Writ of Error, Assignments of Error and Praecipe, acknowledged, and a copy of the same retained at Beaufort, S. C., October 27, 1926.

.....

W. J. THOMAS,
Attorneys for Defendant, Chas. S. Mitchell.

(38) **MEMORANDUM**

Petition for Writ of Error filed October 29, 1926.

Order allowing Writ of Error filed October 29, 1926.

Writ of Error issued and filed October 29, 1926.

Bond on Writ of Error, dated October 28, 1926.

Penalty $250.00 conditioned for costs.

Obligors: Federal Intermediate Credit Bank of Columbia, as principal, and National Surety Company, New York, N. Y., as surety.

Citation Filed October 29, 1926.

Service acknowledged November 1, 1926.

STIPULATION FOR CLERK TO TRANSCRIPT RECORD

Filed November 1, 1926.

It is hereby stipulated and agreed that the Clerk of this Court shall make up a transcript of the record in the above styled cause, and transmit the same to the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Va.; and that it be

printed under the supervision of the Clerk of that Court, in accordance with Rule 23.

RANDOLPH MURDAUGH,
D. W. ROBINSON,
Counsel for Appellant.

BUIST & BUIST,
W. J. THOMAS,
Counsel for Appellees.

November 1, 1926.

(39) **CLERK'S CERTIFICATE**

In the District Court of the United States for the Eastern District of South Carolina.
At Law.

I, Richard W. Hutson, Clerk of the District Court of the United States for the Eastern District of South Carolina, do hereby certify, that the foregoing is a true and correct copy of the record and proceedings in the case of Federal Intermediate Credit Bank, of Columbia, Plaintiff, against Chas. S. Mitchell, et al., Defendants, together with the Order of Dismissal and all papers relating to the same, as appears by the original record now on file in my office.

Given under my hand and seal of said Court, at Charleston, S. C., this 18th day of November, 1926.

RICHARD W. HUTSON,
C. D. C. U. S. E. Dist. S. C.

(SEAL)

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 2591.

Federal Intermediate Credit Bank of Columbia, South Carolina, Plaintiff in Error,

versus

Chas. S. Mitchell, W. E. Richardson, Truckers Supply Company, and South Carolina Agricultural Credit Company, Defendants in Error.

Error to the District Court of the United States for the Eastern District of South Carolina, at Charleston.

November 19, 1926, the transcript of record is filed and the cause docketed.

Same day, the original petition for writ of error, order allowing writ of error, writ of error, bond and citation are certified up under Sec. 7 of Rule 14.

Same day, the appearance of Randolph Murdaugh and D. W. Robinson is entered for the plaintiff in error.

November 22, 1926, the appearance of Geo. L. Buist is entered for the defendant in error, Charles S. Mitchell.

November 27, 1926, the appearance of W. J. Thomas is entered for the defendants in error.

December 3, 1926, twenty-five copies of the printed record are filed.

ARGUMENT OF CAUSE.

January 28, 1927, (January term, 1927), cause came on to be heard before Waddill and Rose, Circuit Judges, and Baker, District Judge, and is argued by counsel and submitted.

ORDER RESTORING CASE TO DOCKET FOR A RE-ARGUMENT.

Filed and Entered April 14, 1927.

(Style of Court and Title Omitted.)

FOR REASONS APPEARING TO THE COURT, this cause, which was on January 28, 1927, argued and submitted, is restored to the docket for a re-argument therein to be had at the present term.

EDMUND WADDILL, JR.,
Senior Circuit Judge.

April 14, 1927.

RE-ARGUMENT OF CAUSE.

April 27, 1927 (April term, 1927), cause came on again to be heard before Waddill, Parker and Northcott, Circuit Judges, and is re-argued by counsel and submitted.

OPINION. 41

Filed July 5, 1927.

United States Circuit Court of Appeals

FOURTH CIRCUIT

No. 2591.

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA,
Plaintiff in Error,

versus

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, and SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY,
Defendants in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina, at Charleston.

(Argued April 27, 1927. Decided July 5, 1927.)

Before WADDILL, PARKER and NORTHCOTT, Circuit Judges.

D. W. ROBINSON (RANDOLPH MURDAUGH on brief) for Plaintiff in Error, and GEORGE L. BUIST (BUIST & BUIST and WILLIAM J. THOMAS on brief) for Defendants in Error.

PARKER, Circuit Judge:

This was an action instituted by the Federal Intermediate Credit Bank, of Columbia, S. C., in the United States District Court for the Eastern District of South Carolina, to recover judgment on certain promissory notes in an amount exceeding three thousand dollars exclusive of interest and costs. The action was dismissed for lack of jurisdiction, and the only question presented by the assignment of error is whether this ruling was correct. The plaintiff is a corporation created under the Act of Congress of March 24, 1923, 42 Stat. 1454, all of its stock being owned by the Government of the United States, and the contention in its behalf is that, because of the federal incorporation and government ownership of stock, the Federal Courts have jurisdiction of the action. The contention of defendants, on the other hand, is that plaintiff, by the very act under which it is created, is denied the right to invoke the jurisdiction of the Federal Courts on the ground of federal incorporation.

The District Courts of the United States are given original jurisdiction of actions where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars; "and (a) arises under the Constitution or laws of the United States * * *." Judicial Code, Section 24, Par. 1. The universal construction of this clause, since its original enactment in 1875, has been that corporations organized under acts of Congress, when suing or being sued, where the jurisdictional amount is involved, have the right, on the ground that such suits arise under the laws of the United States, to invoke the jurisdiction of the Federal Courts, except where the particular suit is excluded from the federal jurisdiction by some specific enactment. *Bankers Trust Co.* v. *Tex. & Pac. Ry. Co.* 241 U. S. 295, 306-7; *American Bank & Trust Co.* v. *Federal Reserve Bank* 256 U. S. 350; *Sowell* v. *Federal Reserve Bank* 268 U. S. 449. Since, therefore, plaintiff is created under act of

Congress and this action involves the jurisdictional amount, the District Court had jurisdiction of the action unless its jurisdiction has been excluded by some special act.

The question then narrows itself to this: Is there a special act excluding federal incorporation as a ground of federal jurisdiction in suits by or against Federal Intermediate Credit Banks? We think that there is. Section 201 (c) of the act under which these banks are created (42 Stat. 1454, U. S. C. Title 12, Section 1023) provides:

"(c) Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, and for purposes of jurisdiction shall be deemed a citizen of the State where it is located."

We are not left in doubt as to the meaning of the language "for purposes of jurisdiction shall be deemed a citizen of the state where it is located". Practically the same language is used in paragraph 16 of section 24 of the Judicial Code, which, after providing for jurisdiction in the Federal Courts in certain cases affecting National Banking Associations, continues:

"And all National Banking Associations established under the laws of the United States *shall, for the purposes of all other actions by or against them*, real, personal, or mixed, and all suits in equity, *be deemed citizens of the States in which they are respectively located.*" (Italics ours).

This section was before the Supreme Court in *Herman* v. *Edwards* 238 U. S. 107, and it was there held that the effect of the language used was to exclude federal incorporation as a ground of federal jurisdiction. In that case it was argued that there had been omitted from the section of the Judicial Code certain language contained in the act of 1888 relating to suits by and

against National banks which provided that the Federal Courts should "not have jurisdiction other than such as they would have in cases between individual citizens of the same state", and that the effect of omitting this from the section of the Code was to restore jurisdiction in that class of cases. In denying this contention and holding that jurisdiction was excluded by the language of the Code above quoted, the Court said:

"Section 4 of the Act of 1888, as will be seen, opened with the provisions which excluded national banks from the Federal jurisdiction which otherwise would have attached to controversies concerning them. This being done, the statute proceeded to provide that the exclusion previously specified should not include certain classes of controversies which it was deemed best should come under the Federal jurisdiction, thus leaving those classes of cases under the general rule, since they were carved out by the last clause of the section from the provisions as to exclusion which were found in the first. In reenacting these provisions of the Act of 1888 in par. 16 of sec. 24 of the Judicial Code, obviously to make the purpose of the reenacted statute clearer, just the opposite form of statement was resorted to, since paragraph 16 opens by conferring Federal jurisdiction only in those classes of cases which were kept within that jurisdiction by the concluding clause of sec. 4 of the Act of 1888, and hence no jurisdiction was given as to the other classes of cases which were excluded from such jurisdiction by the Act of 1888. The reenacted section in other words, instead of generally stating what was excluded from jurisdiction and then carving out exceptions, as was done in the Act of 1888, gave jurisdiction only in the cases where it was intended to give it *and then proceeded to declare that in all other cases within the contemplation of the section there should be no jurisdiction, thus making the lines clear and broad and leaving no room for controversy or doubt.*" (Italics ours).

Counsel for plaintiff, in endeavoring to distinguish the case at bar from *Herman* v. *Edwards*, lay much stress on the reasoning of the Supreme Court in that case

to the effect that an intention to change the rule prescribed by the statute of 1888 should not be indulged without a clear manifestation of such purpose. But, of course, whatever the reasoning by which the Court arrived at the meaning of the statute, the interpretation once made became as much a part of the statute as the language of the statute itself, and when practically the same provision respecting jurisdiction was adopted as a part of the Intermediate Credit Bank Act, it carried with it the interpretation which the Supreme Court had placed thereon. *Copper Queen Mining Co.* v. *Arizona Board* 206 U. S. 474. It is suggested that the purpose of Congress was not to exclude jurisdiction, but to provide for venue; but such interpretation would ignore the use of the word "jurisdiction" in the act itself, as well as the interpretation which the Supreme Court had placed upon the remainder of the language used. We must assume that Congress did not mean "venue" when it said "jurisdiction", or for an entirely different construction to be given the language here from that which the Supreme Court had given it in *Herman* v. *Edwards*. We think, therefore, that there can be no question that the effect of the quoted provision of the act of 1923 was to exclude federal incorporation as a ground of jurisdiction in this class of cases.

The only question which remains is whether jurisdiction of suits by or against Federal Intermediate Credit Banks has been affected by section 12 of the Act of February 13, 1925, 43 Stat. 941, U. S. C. Title 28, section 42. That section provides:

"Sec. 12. That no district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress; *Provided*, That this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock."

It is clear that if section 201 (c) of the Act of March 4, 1923 were not in force, the section just quoted would not exclude jurisdiction in this case; for, as the United States owns all of the capital stock of the Intermediate Credit Banks, suits by or against them would fall within the exception. But that, of course, is not the situation. Section 201 (c) has not been repealed and its effect, as we have seen, is to exclude jurisdiction in such cases. Now section 12 of the Act of February 13, 1925 is a general statute excluding federal incorporation as a ground of federal jurisdiction. The proviso of section 12 merely withdraws from the operation of that section corporations wherein the Government of the United States is the owner of more than one-half of the capital stock. It does not attempt to restore jurisdiction in cases where jurisdiction has been excluded by other statutes, and in such cases the jurisdiction remains exactly as it was before the statute was enacted. To state the matter in another way, section 12 of the Act of 1925 is a limitation upon the jurisdiction conferred generally by the Act of 1875, now paragraph 1 of section 24 of the Judicial Code. The proviso is merely a limitation upon that limitation and has nothing to do with an entirely independent limitation contained in an altogether different statute.

It may be suggested that section 12 of the Act of February 13, 1925, was intended as a consolidation and implied repeal of prior acts dealing with jurisdiction of suits by or against corporations created under Act of Congress; but, in view of the history of the legislation, we are satisfied that this view is not correct. Federal incorporation was excluded as a ground of federal jurisdiction in suits by or against federally incorporated railroads by section 5 of the Act of January 28, 1915, 38 Stat. 804. The report of the Judiciary Committee of the Senate shows that section 12 of the Act of February 13, 1925, was intended as an enlargement of the provision of section 5 of the Act of January 28, 1915, and it appears that, upon recommendation of the committee, the proviso

now appearing as a part of the section was adopted. Section 13 of the act as passed expressly repealed section 5 of the Act of January 28, 1915; but no reference whatever was made to section 201 (c) of the Intermediate Credit Bank Act of March 24, 1923 either in the report of the Committee or in the act itself.

It is true that the Act of 1925 contains a general clause repealing "All other Acts and parts of Acts in so far as they are embraced within and superseded by this act or are inconsistent therewith". But the provision of the Act of 1923 under consideration is neither embraced within nor inconsistent with section 12 of the Act of 1925. The Act of 1923 applies to Federal Intermediate Credit Banks, all of whose stock is owned by the Government of the United States; the proviso contained in section 12 expressly excludes such corporations from the operation of section 12. Most certainly, therefore, the former act is not embraced within the latter. And it is equally certain that the former is not inconsistent with the latter; for a provision excluding federal jurisdiction in a certain class of cases could not possibly conflict with a provision excluding jurisdiction in a wider class, but excepting from the latter provision cases covered by the former. In this connection, it is worthy of note that, in the Code enacted by Congress as containing *prima facie* the laws in force December 7, 1925, section 201 (c) of the act of March 4, 1923, is included as section 1023 of Title 12, notwithstanding the inclusion also of section 12 of the act of February 13, 1925 as section 42 of Title 28.

Our conclusion, therefore, is that the effect of the Act of 1925 is merely to exclude federal incorporation as a ground of federal jurisdiction, except in the case of corporations, more than half of whose stock is owned by the government. As to such corporations, it does not exclude jurisdiction and does not confer or restore it, but allows it to remain as it is under existing law. The existing law applicable here is the quoted provision of the

Act of 1923, and under it the Court was without jurisdiction.

Much can be said in support of the view that the right to resort to the Federal Courts should be preserved to corporations whose stock is owned by the Federal Government, but, whatever our views as to this, the question involved is clearly one for Congress and not for the Courts.

Affirmed.

WADDILL, Circuit Judge, dissenting:

I regret exceedingly my inability to concur with my brethren in their views expressed in the majority opinion, and because of the unusual importance of the case, venture to give my reasons for not so doing.

Special consideration must be given to the character of the case, in order to arrive at the correct conclusion of the question involved. Its importance will be readily seen, as it involves the right of the federal government to maintain a suit in its own courts to enforce a liability in its behalf arising in a corporation chartered and owned by it.

Since the decision of *Osborne* v. *Bank*, 9 Wheat. 738, there has been no doubt that rights in such corporations arise under the laws of the United States, and hence jurisdiction to maintain suits by or against such corporations exists by reason of the federal power incident to their creation. A long line of decisions follows *Osborne* v. *Bank*, *supra*, 9 Wheat. 738; *Petri* vs. *Commercial National Bank*, 148 U. S. 648; *Bankers Trust Co.* v. *T. & P. R. R.* 241 U. S. 367; *American Bank & Trust Co.* vs. *Fed. Reserve Bank*, 256 U. S. 365-7; *Sowell* vs. *Fed. Reserve Bank*, 268 U. S. 453, 456; *Rose Fed. Jur. & Pro.* (3d ed.) p. 235, sec. 238; *Simkins Fed. Prac.* Rev. ed., p. 401.

This would seem doubly true where a corporation thus deriving its existence from the federal government,

is also owned by it; and hence in the absence of some specific legislation on the subject, limiting and prescribing the federal jurisdiction, there can be no doubt of its existence; and that the federal courts had jurisdiction of suits thus arising under the federal law,—this because of the federal question involved and the ownership by the government, and not because of any mere citizenship of the parties.

A limitation was placed upon this right to maintain suits in the federal courts in cases by or against national banks (act 1882, 22 Stat. L. 162-3), and subsequently by a further act of 1888, 25 Stat. L. 436, which acts are now embodied in section 24, par. 16, Judicial Code, 1911; 4 Fed. Stat. Ann. 1054; U. S. Comp. Stat. (1916) 991.

By section 5 of the act of January 28, 1915, 38 Stat. L. 804, section 5 U. S. Comp. Stat. (1916) 1233-a, jurisdiction is denied to the courts of the United States over suits by or against railroads, upon the ground that such companies were incorporated by act of Congress.

By act of March 24, 1923, 42 Stat. L. 1454, sec. 201-c, creating the Federal Intermediate Credit Bank, which was an amendment to the Federal Farm Law passed 7 January, 1916, 39 Stat. L. 360, it was prescribed that for the purpose of jurisdiction such banks should be deemed to be citizens of the State where located.

By section 12 of the act of February 13, 1925, 43 Stat. L. 941, Fed. Stat. Ann. 1925, and U. S. Comp. Stat. sec. 9912 (1925 supp.), the United States courts were denied jurisdiction of any action or suit by or against any corporation on the ground that it was incorporated by or under any act of congress, unless such corporation is one wherein the government of the United States is the owner of more than one half of its capital stock.

A careful consideration of these several provisions of the law it seems to me clearly demonstrates the existence of the jurisdiction of the United States courts in the instant case. The Federal Intermediate Credit Bank

is a federal corporation created by an act of Congress; and hence suits by or against it, like those arising under the national bank acts, existed in the federal court prior to the legislation hereinbefore recited, and likewise in the case of railroads prior to the act of January 28, 1915. After the passage of these acts, jurisdiction of the federal courts in such cases arising by reason of the federal charter, was specifically withdrawn; and the terms of the several acts above mentioned denying jurisdiction, while not in the same language, were substantially alike in that the right to sue and be sued because of their respective existence under acts of Congress, should not authorize such suits to be brought in the federal courts; and this legislation so remained as to the corporations mentioned, as respects their right to sue and be sued, until Congress saw fit to place them in substantially the same category as similar corporations chartered under State laws.

In the passage of the act of February 13, 1925, a different and more extended policy was adopted. Congress then determined that no federal court should have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated under an act of Congress. This was a sweeping and clear provision, and placed all federal corporations upon the same basis as respects the jurisdiction of the federal courts, predicated alone upon the existence of the federal question. Congress in thus limiting the jurisdiction of all suits as to all corporations created by federal charter, passed sec. 12 of the act of 13 February, 1925, with a proviso as to federally owned corporations, as follows:

"Sec. 12. (District Courts—Jurisdiction of actions against Federal Corporations.) That no district court shall have juridiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: *Provided, That this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or*

under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock." (Italics mine).

Upon thus denying jurisdiction as to all corporations, because of the existence of the federal question, Congress saw fit to exempt from the operation of the amendment those in which the government owned more than one half of the capital stock. In other words the section, in a few clear and simple words denied to the district courts of the United States jurisdiction of all suits by or against corporations, merely because the same were created by act of Congress; but with a proviso equally far reaching and clear, that where the government of the United States owned more than one half of the capital stock of the corporation, the limitation should not apply, and that as to them, such courts were not deprived of jurisdiction because of their federal character.

This would seem to be a reasonable and wise enactment in view of the curtailment of jurisdiction of all corporations because of such federal question, as well as of the small number of such corporations covered by the specific acts hereinbefore recited. No question of the repeal of the previous acts, either by implication or otherwise is necessarily involved, although the provisions of the act of 13 February 1925, sec. 12, covering the same general subject, respecting jurisdiction of the federal courts because of federal charters, are broad enough to effect such repeal. The new act places no limitation upon the jurisdiction arising from the existence of a federal question, its language being substantially the same as that covered by the prior separate acts save and except it was made applicable to all such corporations, with a general proviso that the limitation should not apply to any corporation of which the government of the United States is the owner of more than one half of its capital stock.

It would seem that the Congress had the undoubted

right to place a limit upon the jurisdiction of its courts in cases arising under charters granted by the federal government. Manifestly, instead of several special acts withdrawing the jurisdiction to sue or be sued because of the federal question, Congress might by simple enactment have embraced all such corporations; and it might have done so and excepted from the operation government owned corporations, either in part or as a whole. That is exactly what was done by the far reaching provisions of the Act of February 13, 1925, which so radically altered and affected generally the jurisdiction of the federal courts. Instead of attempting to follow or change all of the existing legislation affecting the right of corporations to sue and be sued because of the existence of the federal question, a sweeping provision eliminating entirely all corporations save those in which the government owned more than one half of the capital stock was made; and to avoid any possible confusion on the subject, section 13 of the Act of 13 February 1925, provided for the repeal of all other Acts, as follows:

"Sec. 13. That the following statutes and parts of statutes be, and they are, repealed; * * * All other Acts and parts of Acts in so far as they are embraced within and superseded by this Act or are inconsistent therewith."

It is thus made clear that Congress excepted from the provisions of the Act denying jurisdiction to the federal courts of suits because of their federal character, those in which the government was the owner of more than one half of the capital stock of the corporation in suit. This is what was done. The enactment was enlarged making the same applicable not to a few, but to all corporations chartered by the government, the proviso simply excepting from the provisions thereof corporations in which the government owned more than one half of the capital stock; and as to such suits, the instant case being

within that class, jurisdiction remained in the federal courts by reason of the existence of the federal question involved.

A careful analysis of the views taken by those maintaining the contrary position, will make clear that no effect is given to the meaning of the proviso respecting the right of the government to maintain suits of this class within its own courts. This of itself would be a sufficient answer and objection to the interpretation contended for, as the act manifestly should be so construed as to give effect and meaning to all of its provisions, and not to a part only. While the courts have nothing to do with the reasons actuating Congress in what it did or should have done, and we are bound by what it did, still the justice and reasonableness and right of the proviso in question must commend itself to all giving serious consideration to the subject. It should not be assumed that the congress of the United States would pass an act the effect of which was to place billions of the public money in the hands of banking institutions created by it and scattered throughout the country, without at the same time taking the precaution to retain jurisdiction of such moneys within its courts, if it saw proper to do so. Such course would be almost unthinkable.

All sorts of conditions might and most probably would arise incident to the handling and safe-keeping of the vast amounts involved, in at least some of the places where the institutions are located, that should at once suggest the great undesirability of the adoption of the course contemplated.

Special reliance is placed upon the case of *Herman* vs. *Edwards*, 238 U. S. 107, 118, by those seeking to establish the appellee's contention. It will be observed that this decision long ante-dated the two acts under consideration here, viz: the act creating the Federal Intermediate Credit Bank, and the limitation placed upon the jurisdiction of the federal courts by reason of a federal

question generally; and I can not see that the case is of controlling interest here.

From my view, the district court was clothed with jurisdiction, and the decree denying the same and dismissing the bill should be reversed.

F. J. Mitchell Printing Co., Richmond, Va.
6-14-27-100

JUDGMENT.

Filed and Entered July 8, 1927.

UNITED STATES CIRCUIT COURT OF APPEALS.

Fourth Circuit.

No. 2591.

Federal Intermediate Credit Bank of Columbia, South Carolina, Plaintiff in Error,

vs.

Chas. S. Mitchell, W. E. Richardson, Truckers Supply Company, and South Carolina Agricultural Credit Company, Defendants in Error.

In Error to the District Court of the United States for the Eastern District of South Carolina.

THIS CAUSE came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of South Carolina, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs.

JOHN J. PARKER,
U. S. Circuit Judge.

July 8, 1927.

July 18, 1927, petition of plaintiff in error for a stay of the mandate pending application in the Supreme Court for a writ of *certiorari* is filed.

ORDER STAYING MANDATE.

Filed July 18, 1927.

(Style of Court and Title Omitted.)

UPON THE APPLICATION of the Plaintiff in Error, by D. W. Robinson, Esq., its attorney, and for good cause shown,

IT IS ORDERED that the mandate of this Court in the above case be, and the same is hereby, stayed pending the application of the Plaintiff in Error in the Supreme Court of the United States for a writ of *certiorari* to this Court, or until the further order of the said Supreme Court or this Court, provided said application is filed in the said Supreme Court within 60 days from this date.

July 18, 1927.

JOHN J. PARKER,
U. S. Circuit Judge.

CLERK'S CERTIFICATE.

United States of America,
Fourth Circuit, ss:

I, CLAUDE M. DEAN, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause, as the same remains among the records and files of the said Circuit Court of Appeals.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 5th day of August, A. D. 1927.

(Seal of Court.)

CLAUDE M. DEAN, Clerk,
U. S. Circuit Court of Appeals,
Fourth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 21, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.